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REMARKS

Responsive to the Final Office Action mailed February 16, 2005, the applicant has Canceled claims 1-58 and added new claims 59-115. The new claims overcome the examiners rejections under 35 USC 101 and 35 USC 112. The applicant submits the new claims are allowable, which allowance is respectfully requested.

Furthermore, in paragraph 9, the examiner rejects claim 1 under 35 U.S.C. 103(a) over US 2002/0129127 A1 (Romero) in view of US 6,301,616 (Pal).

As to claim 1, the examiner says that "Romero teaches a method for the collection and analysis of computer system capacity data in a partition which determines a sizing metric comprising the steps of:". The applicant disagrees. The Romero reference is to a load balance that is not in any partition. As shown in Fig. 1, the load balancer is in the network path in communication with "a network interface card" of each partition.

The examiner says that "Romero teaches determining a resource control parameter using the information obtained but fails to explicitly teach determining done by a calculation. However, Pal teaches a resource allocation system in which a calculation involving resource parameters are used to determine the resource allocation (col 11. lines 1-25. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the feature of determining a resource control parameter using the information obtained be done by a calculation in order to obtain a decision of resource allocation based on various significant parameters and constraints." The applicant disagrees. The Pal invention is directed to allocating program objects (resources) in a server to clients such that an object that is assigned to a client is de-allocated from the client and made available to other clients. According to Pal:

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"Conventional systems like the one depicted in FIG. 1 have been developed where a computer program 101 (a client) on a client computer 102 requests the allocation of a resource, such as a file, stored on a server computer 104 that is communicatively linked to the client computer via a network 106. After allocating the resource, the client 101 utilizes the resource and then indicates to the server computer 104 that it has completed its use of the resource and that the server computer may de-allocate the resource. The de-allocation of the resource on the server computer 104 is performed in response to the client 101 indicating that it is finished with the resource.

A number of problems can arise in the conventional system 100 depicted in FIG. 1. For example, if the client computer 102 is connected to the server computer 104 via a rather untrustworthy network 106, the resource may never be de-allocated by the client and thus the resource cannot be used by other clients. Additionally, the client may forget about the use of the resource (e.g., due to an error) and again the resource is continually allocated and unavailable to other clients. Managing these problems becomes much more complex as the number of resources that the server computer 104 can allocate becomes very large and the number of clients who can use the resources also becomes very large. In this situation, the server computer 104 spends a significant amount of processing time maintaining numerous data structures containing information about thousands or even millions of resources. It is therefore desirable to improve resource allocation strategies to suit the needs of a client/server environment where the server computer has many resources that can be allocated to many clients. "

Pal is further directed to a single Server and does not express or imply a partitioned computer system as shown in the claims. Therefore, Pals resources being program application objects rather than hardware resources available to an operating system in a partitioned computer system is non-analogous art relative to Romero and the present invention. *In re Clay*, 966 F.2d 656, 658-59, 23 U.S.P.Q.2d 1058, 1060-61 (Fed. Cir. 1992) which requires "either 1. The art is from the same field as the invention or 2. The reference is reasonably pertinent to the problem solved by the invention".

Furthermore the examiner has not cited a motivation to combine within the cited art. According to *Karsten Mfg Corp. V. Cleveland Gulf Co.*, 242 F.3d 1376, 1385, 58 U.S.P.Q.2d 1286, 1293 (Fed. Cir. 2001), "In holding an invention obvious in view of a combination of references, there must be some suggestion,

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motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to select the references and combine them in the way that would produce the claimed invention:." Also in re *C.R. Bard, Inc. V. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998).

Even if one were to combine the two inventions, the result would be a partitioned host having a Pal servers in partitions, the Pal server allocating and de-allocating Program application objects to client computers in combination with a Romero Load Balancer for directing client messages to one of a the partitions based on Load Balancer determined activity. Furthermore, Pals calculating a period of time for a program application object to be allocated to a client has no more bearing on the Romero invention than a super-computer calculating the effect of a seismic event. Therefore the new claims are allowable, which allowance is respectfully requested.

It is respectfully submitted that the application is now in condition for allowance, which allowance is respectfully requested.

RESPECTFULLY SUBMITTED

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